

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies which adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The rules proposed for readoption rely on Federal standards and offer voluntary marketing quality standards and logos. Products marketed under "Made from Premium Jersey Fresh Milk" use New Jersey produced milk with a somatic cell count which exceed the Federal minimum standards (7 CFR 58.133); however, this is a voluntary, special marketing program, which has a limited supply of less than five percent of the fluid milk consumed in New Jersey and does not seek to establish standards except for those who choose to participate in this marketing program. As such, its requirements will not conflict with any Federal standards.

The Jersey Seafood program relies on 7 CFR 60.101 et seq., which sets forth Federal standards for labeling wild and farm-raised fish and shellfish products with regard to country of origin notification. The rules proposed for readoption at N.J.A.C. 2:71-9.5(a) impose labeling standards that are substantially the same as, but do not exceed those required by, 7 CFR 60.101 et seq., for country of origin notification.

The remainder of the rules proposed for readoption deal with the use of a logo for marketing New Jersey agricultural commodities. Because there are no Federal standards governing the creation and regulation of a logo identifying New Jersey agricultural products, as provided by N.J.S.A. 4:10-1 et seq. and 4:10-16 et seq., no Federal standards analysis is required.

Jobs Impact

It is not anticipated that the rules proposed for readoption will result in the generation or loss of jobs. However, it is anticipated that the rules proposed for readoption will positively affect New Jersey's agricultural industry, averting the permanent loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption will have a positive impact on New Jersey agriculture by helping to maintain a viable agricultural industry in the Garden State as described in the Social and Economic Impact statements above.

Regulatory Flexibility Analysis

The rules proposed for readoption have an impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., primarily farmers. The rules impose compliance standards, as described in the Summary above, on those participating in these programs. There are also reporting requirements, including registering samples of labels used in the shell egg program and annual reporting in the Jersey Fresh program. The recordkeeping requirements include maintenance of accurate records in the shell egg program, proper invoicing in the Jersey Fresh Program, and the marking of potato packages. However, the rules proposed for readoption are designed to ensure truth in packaging and an adherence to statements of quality. This assures that products are delivered to consumers free from defects and risk of disease. Therefore, it is the Department's position that although the rules proposed for readoption may be more costly for a small business to implement, they are necessary for the public health, welfare, and safety. Further, by the use of uniform grades and standards all products are judged against each other intrinsically and not just on advertising budget.

The Department has determined that since portions of the rules proposed for readoption, specifically N.J.A.C. 2:71-2, and 6 through 9, are voluntary they do not impose unduly burdensome recording, recordkeeping, or compliance requirements on either large or small businesses. The rules proposed for readoption protect the interest of New Jersey farmers (small businesses) from various sectors of New Jersey agriculture by offering the use of the logos. The use of uniform product identification promotes the orderly marketing of goods that are similar in the generic sense and allows equally good products from the small farm to compete with the products of larger operations. Should one choose to participate under the voluntary rules, the cost of participating should be offset by higher prices received for the product and by the valuable

marketing program provided. Given the preponderance of small producers and the program's purpose to promote high quality farm products, the Department has provided no lesser or differing requirements or exceptions based on business size.

Housing Affordability Impact Analysis

The rules proposed for readoption will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption provide grading and standards for agricultural commodities and voluntary marketing "logo" programs.

Smart Growth Development Impact Analysis

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption provide grading and standards for agricultural commodities and voluntary marketing "logo" programs.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:71.

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Administration and Enforcement; Process

Construction Permits – When Required;

Construction Permits – Application

Elevator Safety Subcode

Definition of "Elevator" or "Elevator Device"

Proposed Amendments: N.J.A.C. 5:23-2.14, 2.15, and 12.1

Authorized By: Richard E. Constable, III, Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-047.

Submit written comments by June 3, 2016, to:

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The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 5:23-2.14(g) would exempt retaining walls under the purview of a county or of the State Department of Transportation (DOT) from the requirement to obtain a construction permit. The proposed amendment to N.J.A.C. 5:23-2.15(a)5 adds a cross-reference to a provision adopted in 2009 (N.J.A.C. 5:23-2.15(f)4ii(1)) providing for plan review to be performed notwithstanding the fact that required approvals may not yet be in place as long as the permit application is otherwise complete.

The proposed amendment to N.J.A.C. 5:23-12.1(e)1 would make the terminology used in the Uniform Construction Code consistent with the terminology used in ASME (American Society of Mechanical Engineers) A17.1, the standard adopted by reference and containing the technical requirements for elevators. In addition to eliminating confusion by providing for consistent use of terminology, the proposed amendment

incorporates a more precise list of the devices included under the broader term “conveying devices.”

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments improve the administration of the State Uniform Construction Code: (1) by making it clear that retaining walls subject to review and approval by a county or by the DOT do not require a construction permit; (2) by incorporating a cross-reference to eliminate any possibility of reading the rules governing permit applications as being inherently contradictory; and (3) by making the terminology used in the administrative rules consistent with the terminology used in the referenced standard, ASME A17.1.

Economic Impact

These proposed amendments are not expected to have any real, measurable economic impact. If there is, in fact, an impact, it would be an extremely modest one. If Uniform Construction Code permits have been obtained for retaining walls associated with county or DOT projects, the proposed rule amendment would make it clear that this is not necessary for future projects.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or any State statute that incorporates or refers to any Federal law, standard, or requirements.

Jobs Impact

The proposed amendments are not expected to have an impact on the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would impact the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments are not expected to impose any reporting, recordkeeping, or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or to require them to engage any professional services they would not otherwise need to engage. The amendments include a construction permit exemption, provide a clarifying cross-reference to facilitate plan review, and conform rule terminology to the referenced ASME A17.1 standard.

Housing Affordability Impact Analysis

It is not expected that the proposed amendments will have any impact on the average cost of housing. The amendments include a construction permit exemption, provide a clarifying cross-reference to facilitate plan review, and conform rule terminology to the referenced ASME A17.1 standard.

Smart Growth Development Impact Analysis

It is not expected that the proposed amendments will have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The amendments include a construction permit exemption, provide a clarifying cross-reference to facilitate plan review, and conform rule terminology to the referenced ASME A17.1 standard.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-2.14 Construction permits—when required

(a)-(f) (No change.)

(g) No person shall construct, enlarge, alter, reconstruct, or demolish a retaining wall or series of retaining walls having a total height four feet or greater, or a retaining wall less than four feet having a negative impact on a foundation, without first obtaining a construction permit. The height of a retaining wall shall be the sum of the heights of all retaining walls on the same slope.

1. Exception: This requirement shall not apply to any retaining wall that is intended to be dedicated to the municipality and is subject to regulation, inspection, and the issuance of bonds under Article 6, Subdivision and Site Plan Review and Approval, of the Municipal Land Use Law, P.L. 1975, c. 291 (N.J.S.A. 40:55D-37 et seq.) **nor shall it apply to any retaining wall subject to review and approval by a county engineer or by the State Department of Transportation.**

5:23-2.15 Construction permits—application

(a) The application for a permit shall be submitted on the standard Construction Permit Application form prescribed by the Commissioner at N.J.A.C. 5:23-4.5(b)2 and shall be accompanied by the required fee, as provided for in this subchapter and N.J.A.C. 5:23-4. The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the construction official, which shall include, but not be limited to, the following:

1.-4. (No change.)

5. A statement that all required State, county, and local prior approvals have been given, including such certification as the construction official may require;

i. Exception: For permit applications which lack one or more prior approvals, but are otherwise complete, plan review shall proceed as provided at (f)4ii(1) below;

6.-8. (No change.)

(b)-(f) (No change.)

SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE

5:23-12.1 Title; scope; intent

(a)-(d) (No change.)

(e) For purposes of this subchapter, “elevator” or “elevator device” means a hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or, a power driven, inclined, continuous stairway used for raising or lowering passengers; or, a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes, without limitation, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts, and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators), ASME A18.1 (Safety Standard for Platform Lifts and Stairway Chairlifts), or ASME A90.1 (Safety Standard for Belt Manlifts).

1. This definition shall not apply to any conveying devices[, and process equipment[, and mine elevators]. Conveying devices include [personnel hoists] **special purpose personnel elevators, mine elevators, marine elevators, wind turbine tower elevators, outside emergency elevators**, material hoists, conveyors, and any other device outside of the scope of ASME A17.1, A18.1, or A90.1.

EDUCATION

(a)

STATE BOARD OF EDUCATION

School Ethics Commission

Proposed Readoption: N.J.A.C. 6A:28

Authorized By: New Jersey State Board of Education, David C. Hespe, Commissioner, Secretary.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, and 18A:12-21 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-050.

Submit written comments by June 3, 2016, to: